U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35282842

Date: DEC. 06, 2024

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner seeks employment-based first preference (EB-1) immigrant classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition and dismissed the Petitioner's subsequent motion to reconsider, concluding that he had satisfied only two of ten initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3), of which he must meet at least three. The matter came before us on appeal from the dismissal of the motion, and we determined that the Petitioner met a third initial criterion. We therefore withdrew the Director's decision and remanded the matter for the Director to render a final merits determination in keeping with the framework set forth in *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination). The Director again denied the petition, concluding that although the Petitioner satisfied at least three of the initial evidentiary criteria, he did not show sustained national or international acclaim and demonstrate that he is among the small percentage at the very top of the field of endeavor. We dismissed the Petitioner's appeal. The matter is now before us on motion to reconsider.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motion.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation, provided that the individual seeks to enter the United States to continue work in the area of extraordinary ability, and the individual's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of achievements in the field through a one-time achievement (that is, a major, internationally recognized award) or qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor.[1] *See Kazarian v. USCIS*, 596 F.3d at 1115 (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).[2]

Furthermore, a motion to reconsider must establish that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested benefit. Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings. 8 C.F.R. § 103.5(a)(1)(i), (ii).

II. ANALYSIS

In our decision dismissing the appeal, we agreed with the Director that the Petitioner had not demonstrated his eligibility as an individual of extraordinary ability. Because the Petitioner had demonstrated that he satisfied three of the initial criteria at 8 C.F.R. § 204.5(h)(3), we evaluated the totality of the evidence, including the evidence submitted in support of the three criteria he satisfied as well as the other criteria he claimed to meet, in the context of the final merits determination. In our final merits determination, we explained that the Petitioner had not shown the significance of his work is indicative of the required sustained national or international acclaim or it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, we determined that the Petitioner had not demonstrated he has garnered national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

[1] *See generally* 6 *USCIS Policy Manual* F.2(B)(1), www.uscis.gov/policy-manual (providing that objectively meeting the regulatory criteria in part one alone does not establish that an individual meets the requirements for classification as an individual of extraordinary ability under section 203(b)(1)(A) of the Act).

[2] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2) (instructing that USCIS officers should consider the petition in its entirety to determine eligibility according to the standard – sustained national or international acclaim and the achievements have been recognized in the field of expertise, indicating that the person is one of that small percentage who has risen to the very top of the field of endeavor).

On motion, the Petitioner asserts that the preponderance of the evidence shows that he is one of that small percentage who have risen to the top of their field of endeavor and that he has sustained national or international claim, with achievements that have been recognized in his field of expertise.

With respect to his participation as a judge of the work of others, the Petitioner asserts that our assessment of his service as a reviewer on a panel judging Ph.D. theses (five instances from 2003 until 2010) at his alma mater, [redacted] was in error. He argues that "the Ph.D. Law degree is the highest possible academic degree a lawyer can obtain" and therefore his participation as a reviewer for Ph.D. dissertation committees at [redacted] shows he "has sustained acclaim as a professional at the very top of his field."

An evaluation of the significance of his judging experience is appropriate to determine if such evidence is indicative of the extraordinary ability required for this highly restrictive classification. *See Kazarian,* 596 F. 3d at 1121-22.[3] At issue here is the extent to which the Petitioner's service as a reviewer on a panel judging Ph.D. theses is commensurate with sustained national or international acclaim or a level of expertise placing him among the small percentage at the very top of the field of endeavor.[4] The Petitioner, however, has not established we erred in concluding that that his judging experience did not place him among the small percentage at the very top of his field. *See* 8 C.F.R. § 204.5(h)(2). Nor has he demonstrated we erred in determining that his participation as a judge did not contribute to a finding that he has a career of acclaimed work in the field or that he has sustained national or international acclaim. *See* H.R. Rep. No. 101-723 at 59 and section 203(b)(1)(A) of the Act. The Petitioner did not establish, for instance, that he garnered wide attention from the field based on his work as a thesis reviewer at his alma mater. Nor did the Petitioner establish that his work as a Ph.D. thesis reviewer resulted in or reflects his sustained national or international acclaim in the field, was recognized outside of [redacted] or places him among that small percentage at the very top of the field of endeavor.

Regarding his authorship of two law books and a law book chapter between 1995 and 2005, the Petitioner argues that we erred in concluding that his published work was insufficient to demonstrate that he has sustained national or international acclaim at the very top of his field. He contends that his "published work has not only received interest and attention, but has been considered an original contribution of major impact in the legal field." The Petitioner further claims that USCIS "never requested additional evidence to corroborate the importance of the Petitioner's publications. Had it done so the Petitioner would have provided additional evidence." The Director's August 2020 request for evidence (RFE), however, listed the types of documents a petitioner may choose to submit to show the significance of their original contributions, including "[o]bjective, documentary evidence that the major significant contribution has provoked widespread public commentary in the field or has been widely cited." Additionally, in the October 2023 decision denying the petition, the Director specifically explained:

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[3] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1) (stating that an individual's participation should be evaluated to determine whether it was indicative of being one of that small percentage who have risen to the very top of the field of endeavor and enjoying sustained national or international acclaim).

[4] The Petitioner did not present documentation indicating [redacted] specific requirements for selection of its reviewers. For instance, judging theses for a university that selects its reviewers based on subject matter expertise would not provide strong support for the petition, because possessing expertise in a given field is a considerably lower threshold than having sustained national or international acclaim at the very top of the field.

> The Petitioner is required to demonstrate that the research and publishing career is sustained and that the impact of the research has risen to the level where it places the Petitioner at the very top of the field.
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> Evidence such as citation records can establish that the Petitioner's publications have been cited by researchers and that the impact of the publications has risen to such a level that it places the Petitioner at the very top of the field. The Petitioner submitted a letter from [redacted] Justice of the [redacted] as evidence of what the Petitioner's counsel calls "major recognition" of his 2003 book. Though the letter asserts that the book ". . . provoked widespread commentary among legal scholars and has been cited extensively as an authoritative source in academic discussions as well as in legal cases," the record does not contain evidence that sufficiently supports the assertion. The record does not demonstrate that the Petitioner's overall publishing career or experience has generated a level of impact and recognition that, together with all the other evidence, places the Petitioner among the small percentage at the very top of his field. *See* 8 C.F.R. § 204.5(h)(2). The Petitioner did not submit sufficient objective documentary evidence to establish that his publication record has garnered a level of attention that reflects a "career of acclaimed work" and sustained national or international acclaim.

The Petitioner's RFE response and appellate submission offered two opportunities for him to provide additional evidence to corroborate the importance of his publications and their contribution in the legal field. Our appellate decision reiterated that publication of one's work does not automatically place an individual at the top of their field.[5] We explained that the citation history or other evidence of the influence of his publications can be an indicator to determine the impact and recognition that his work has had on the field and whether such influence has been sustained. For example, numerous independent citations for an article authored by the Petitioner may provide solid evidence that his work has been recognized and that others have been influenced by his work. Such an analysis at the final merits determination stage is appropriate pursuant to *Kazarian,* 596 F. 3d at 1122.

On motion, the Petitioner repeats his earlier claim that the influence of his published work is evidenced by a letter he initially submitted from Justice [redacted] Justice of the [redacted] and founder of the [redacted] Justice [redacted] asserted the Petitioner's book [redacted] (IOB 2003), "has introduced a new legal classification involving the taxation of electronic commercial transactions, which provoked widespread commentary among legal scholars, and has been cited extensively as an authoritative source in academic discussions as well as in legal cases."

[5] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1) (providing that publications should be evaluated to determine whether they were indicative of being one of that small percentage who has risen to the very top of the field of endeavor and enjoying sustained national or international acclaim).

However, as indicated in our appellate decision, the Petitioner has not provided corroborating evidence showing that any of his authored works were used as a reference or that his works have been widely cited or utilized, and therefore sufficient to demonstrate a level of interest in his field commensurate with sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act. Further, the Petitioner did not show the application of his written work by the field and that it represents attention at a level consistent with being among small percentage at the very top of his field. *See* 8 C.F.R. § 204.5(h)(2). The Petitioner, for instance, did not compare his authored works to others in his field of endeavor that are recognized as already being at the top in his field.

While the Petitioner presented evidence showing that he has authored two law books and a law book chapter between 1995 and 2005, he has not demonstrated that this publication record is consistent with having a "career of acclaimed work" or qualifies for this "very high standard." *See* H.R. Rep. No. at 59 and 56 Fed. Reg. 30703, 30704 (July 5, 1991). In addition, he did not establish that his authorship of three published materials is reflective of being among the small percentage at the very top of his field. *See* 8 C.F.R. § 204.5(h)(2). Further, the Petitioner did not show that he has sustained national or international acclaim as his most recent published material, a book chapter, was last published in 2005. *See* section 203(b)(1)(A) of the Act. Accordingly, the Petitioner has not demonstrated we erred in concluding that his published work was insufficient to demonstrate that he has sustained national or international acclaim at the very top of his field.

As it relates to his position as a managing partner for [redacted] since 1989, our appellate decision acknowledged that the Petitioner has performed in a leading role for the law firm.[6] The Petitioner asserts on motion that our assessment of the relevance of the Petitioner's leading and critical roles for distinguished organizations was based on an incorrect application of law and policy. He points out that [redacted] was recognized by *Corporate INTL Magazine* with a 2020 Global Award for [redacted] and that his firm was ranked among the top 20 full-service law firms from 2008 to 2015 by [redacted] which contribute to a finding that his firm has enjoyed a distinguished reputation. The Petitioner also highlights the letter from Justice [redacted] and a letter from [redacted] vice president of the board of legal and legislative affairs of the [redacted]

With regard to the Petitioner's previous employment with other entities, Justice [redacted] letter indicates that based upon the Petitioner's "stature as a leader in his field" he was appointed to serve as the first coordinator of the Post-Graduate and Extension courses of [redacted] between 2011 and 2014. Mr. [redacted] states that [redacted] supported the Petitioner's appointment to serve as Judge of the [redacted] (2004-2005) and Judge of the [redacted] (2006-2008). Our appellate decision explained that the letters from Justice [redacted] and Mr. [redacted] did not address how the Petitioner's positions were leading or critical to these organizations, nor did they provide details of how the Petitioner achieved national or international acclaim based on these positions. Apart from these letters, we noted that the record lacks other independent evidence, such as news articles or other relevant materials, demonstrating that the field has widely recognized the Petitioner's specific roles or contributions to these employers in a manner that evidences a career of acclaimed work. We concluded that the evidence did not show that his roles

[6] This role is indicative of some degree of acclaim in his field.

and achievements at [redacted] are at a level that places him among "that small percentage who have risen to the very top of the field of endeavor." *See* 8 C.F.R. § 204.5(h)(2). The Petitioner's motion does not explain how our discussion of this evidence was erroneous.

Beyond the three criteria that the Petitioner satisfied, our appellate decision considered additional documentation in the record in determining that the totality of the evidence did not demonstrate the Petitioner's eligibility. We concluded that the Petitioner's evidence neither fulfills the requirements of any further evidentiary criteria nor contributes to an overall finding that he has sustained national or international acclaim and is among the small percentage of the top of his field.

As it relates to his claimed original contributions in the legal field, the Petitioner provided letters of support from several individuals. He argues on motion that his "achievements have been considered of major significance in his field." We explained in our appellate decision that the letters of support generally summarized the Petitioner's professional accomplishments and work history. The letters, however, did not explain how the Petitioner's achievements have been considered by the field to be of major significance. Moreover, they did not contain detailed information showing the unusual influence or high impact his contributions have had on the overall field. For instance, in his letter, Justice [redacted] provides that in 2013 the Petitioner successfully argued a case before the [redacted] which resulted in a portion of a 1994 law being declared unconstitutional that had required the Petitioner's clients, rural employers, to pay a social security contribution from revenues from the sale of rural products. Although Justice [redacted] asserts that the Petitioner "exercised significant influence in the Brazilian legal field" because the holding in the case applies "to all 26 Brazilian States and the Federal District," he does not address, for example, whether references to that case are indicative of its significant impact in the field, nor does his letter sufficiently support the assertion that the Petitioner is considered among that small percentage at the very top of his field of endeavor or how he has garnered sustained national or international acclaim.

The Petitioner asks on motion that we reconsider our determination based on Justice [redacted] standing in the field, but does not articulate how our analysis of his letter and the additional letters of support is based on an incorrect application of law or USCIS policy. The recommendation letters offered by the Petitioner do not contain sufficient information and explanation, nor does the record include adequate corroborating evidence, to show that he is viewed by the overall field, rather than by a solicited few, as being among that small percentage at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2)

Regarding published material, the Petitioner states on motion that articles in *Valor*, Bloombergnews.com, and *Washington Post* show that he has sustained national or international acclaim at the very top of his field. In our appellate decision, we noted that he provided copies of five articles. Two of those articles, published in the print version of the Brazilian publication *Valor* in 2006 and 2009, do not identify an author of the material.[7] The remaining articles were not about the Petitioner relating to his work but were about recent trends in the field.[8] For example, a 2016 article

[7] The inclusion of the author is not optional but a regulatory requirement. *See* 8 C.F.R. § 204.5(h)(3)(iii).

[8] The language of the criterion at 8 C.F.R. § 204.5(h)(3)(iii) requires "[p]ublished material about the alien." *See, e.g., Negro-Plumpe v. Okin*, No. 2:07-CV-820-ECR-RJJ, 2008 WL 10697512, at *3 (D. Nev. Sept. 9, 2008) (upholding a finding that articles regarding a show are not about the actor).

from Bloombergnews.com about Brazilian investors having bid up stocks in anticipation of the country's recovery from recession, quotes the Petitioner, among several financial advisors, who opines that "[c]lients are looking at assets, looking at concessions that are cheap." A 2015 *Washington Post* article titled [redacted] quotes the Petitioner who states, [redacted] The Petitioner also provided a 2003 article from *Valor* which quotes him as confirming the ouster of the firm of [redacted] from the legal consulting field and his firm's acquisition of "42 professionals."

Our appellate decision indicated the Petitioner had not shown that the aforementioned level of media attention was consistent with the sustained national or international acclaim necessary for this highly restrictive classification. *See* section 203(b)(1)(A) of the Act. We concluded the Petitioner also did not show that his overall press coverage is indicative of a level of success consistent with being among "that small percentage who [has] risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). Moreover, we determined the Petitioner did not establish that the limited media reporting reflects a "career of acclaimed work in the field" or a "very high standard . . . to present more extensive documentation than that required." *See* H.R. Rep. No. at 59 and 56 Fed. Reg. at 30704. The Petitioner does not articulate how our determination regarding his media coverage is based on an incorrect application of law or USCIS policy.

The Petitioner also claims on motion that our assessment of his remuneration was based on an incorrect application of law or USCIS policy. The record reflects that he received total compensation of R$10,713,428 in 2015 (taxable income of R$55,965 and non-taxable, profit-sharing income of R$10,657,463) as managing partner at his law firm. As evidence that his earnings are high relative to the compensation paid to others working in the field, the Petitioner provided 2020 salary data for attorneys in Brazil from Salaryexplorer.com and Payscale.com. Because the salary data from 2020 is not contemporaneous with the year for which the Petitioner has documented his earnings (2015), he has not shown that the former offers a proper comparison with his compensation. Further, the information from Payscale.com states: "Individuals Reporting: 6 - Based on 6 salary profiles (last updated Jan 17 2020)."[9]

Our appellate decision agreed with the Director that the Petitioner had not demonstrated that he had earned a high salary or other significantly high remuneration in relation to similarly employed workers.[10] Specifically, the Petitioner's position of managing partner at [redacted] indicates both a different and a higher job classification than an attorney. The Petitioner's position contains further job duties and responsibilities than an attorney, reflecting a managerial position.

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[9] The burden is on the Petitioner to establish the accuracy and reliability of the comparative earnings data. When evaluating whether a comparison between an individual's documented remuneration and the remuneration in the survey is accurate, USCIS considers "the validity of the survey. Some websites provide user-reported salary data, which may not be a valid comparison if, for example, too few users reported their salaries, or the data is otherwise not credible or reliable." *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).

[10] The petitioner submitted evidence that combines both salary and remuneration. The language of the criterion at 8 C.F.R. § 204.5(h)(3)(ix) makes a distinction between salary and remuneration. A salary must be "high" and other remuneration must be "significantly high." While the regulatory language at 8 C.F.R. § 204.5(h)(3)(ix) allows for evidence of "other significantly high remuneration for services, in relation to others in the field," the Petitioner did not provide evidence showing that his profit-sharing compensation is "significantly high" compared to other managing partners.

The Petitioner has not shown that he has received a high salary or other significantly high remuneration in relation to other managing partners in his field. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering a professional golfer's earnings versus other PGA Tour golfers); *see also Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App'x 712, 713-14 (9th Cir. 2011) (finding salary information for those performing lesser duties is not a comparison to others in the field); *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). Because the Petitioner did not provide sufficient evidence demonstrating the salaries or remuneration of other managing partners, he has not established that he has commanded a high salary or other significantly high remuneration for services in relation to others in the field.

While the Petitioner argues on motion that his total compensation is considerably higher that the figures reported for attorneys by Salaryexplorer.com, the record does not include supporting evidence that would allow synchronous comparison between his total remuneration and that of other managing partners in his geographic area. Therefore, the evidence does not establish that he receives total remuneration that is "significantly high" or that his earnings are comparable to those of individuals at the very top of the field. Nor has the Petitioner shown that his earnings record after 2015 is indicative of "sustained national or international acclaim."[11] *See* section 203(b)(1)(A) of the Act.

The Petitioner has not shown we erred as a matter of law or USCIS policy in determining the totality of the evidence did not show that he has sustained national or international acclaim and that he is among the small percentage at the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2). Considering the petition in its entirety and the Petitioner's arguments on motion, we conclude that the record, including the evidence discussed above, does not establish the Petitioner's eligibility for the benefit sought.

III. CONCLUSION

The Petitioner has not established that our appellate decision was based on an incorrect application of law or USCIS policy and that our decision was incorrect based on the evidence in the record at the time of the decision. Consequently, we have no basis for reconsideration of our decision. Accordingly, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4). The Petitioner's appeal therefore remains dismissed, and his underlying petition remains denied.

ORDER: The motion to reconsider is dismissed.

[11] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(A)(1) (stating that such acclaim must be maintained and providing *Black's Law Dictionary's* definition of "sustain" is "to support or maintain, especially over a long period of time . . . To persist in making (an effort) over a long period of time").